

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:07CV380-1-MU

CLEVELAND WESLEY HELLER,)
)
 Petitioner,)
)
 v.)
)
STATE OF NORTH CAROLINA,)
)
)
 Respondent.)

)

ORDER

THIS MATTER comes before the Court upon Petitioner's Motion to Reconsider (Doc. No. 5), filed December 24, 2008.

On December 5, 2007, Petitioner filed a federal habeas petition with this Court. On December 11, 2007, this Court dismissed Petitioner's federal habeas petition. Petitioner then filed a motion with the United States Court of Appeals for the Fourth Circuit seeking permission to file a successive petition which was denied because Petitioner had not yet filed a federal habeas petition that would preclude the filing of a federal habeas petition.

It appears from Petitioner's Motion to Reconsider that he does not understand the reason for the dismissal of his December 2007 federal habeas petition. Again, this Court dismissed Petitioner's 2007 federal habeas petition without prejudice for failing to comply with Rule 3(a) of the Rules Governing Section 2254 Cases in the United States District Courts which requires that a petitioner's petition must be accompanied by the applicable filing fee or a motion for leave to proceed in forma pauperis.

Consequently, in addition to likely being untimely, Petitioner's Motion to Reconsider does not provide any reason for this Court to reconsider its earlier ruling and his Motion to Reconsider will be denied.

IT IS, THEREFORE, ORDERED that Petitioner's Motion to Reconsider is **DENIED**.

Signed: January 7, 2009

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

